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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,365	05/04/2001	Vincent De La forcade	2365-27	8183

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02/05/2004

Nixon & Vanderhye
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EXAMINER

NGO, LIEN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 02/05/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/787,365

Applicant(s)

DE LA FORCADE, VINCENT

Examiner

LIEN TM NGO

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-43 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-43 and 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 26, 28, 30, 32, 34, 36, 38, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Mennesson (Fr. 2,607,786).

In regard to claims 26, 28 Mennesson discloses, in figs. 1 and 2, a device is capable of storing liquid comprising a container and a removable cap 2. The container comprises a nozzle having an outer portion containing a gripping portion (screw thread). The cap comprises a sidewall with an inner surface containing gripping portion to engage the nozzle gripping portion. The cap further comprising a containment element 6 which is capable to retain liquid in the container axially distant from the container orifice.

In regard to claims 30, 32, 34, 36 and 38, the cap further comprises a communication element 3 having a duct capable placing inside the container in communication with a zone delimited by the cap and in communication with the outside when the cap is partially gripping the nozzle (see fig. 2). The communication element comprises 4 tabs separated by slots 5.

In regard to claim 45 and 46, the cap comprise a stopper element 3 and a pressure equalizing element 5 which equalizes pressure inside the container and outside the container when the cap is partially gripping the nozzle (see fig. 2).

3. Claims 25-29, 31, 43 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Baugh (3,592,349).

In regard to claims 25-28, 43, 46, Baugh discloses, in figs. 1-3, and 6, a device is capable of storing liquid comprising a container 10 and a removable cap 17. The container comprises a nozzle 14 having an outer portion containing a gripping portion 14. The cap comprises a sidewall with an inner surface containing gripping portion 26 to engage the nozzle gripping portion. The cap comprise a stopper element 21 and a pressure equalizing element 19 which equalizes pressure inside the container and outside the container when the cap is partially gripping the nozzle (see fig. 2). The cap further comprising a containment element 22 which is capable to retain liquid in the container axially distant from the container orifice.

In regard to claims 29 and 31, the cap further comprises a communication element having a duct (the passage between the stopper element 21) capable placing inside the container in communication with a zone delimited by the cap and in communication with the outside when the cap is partially gripping the nozzle (see fig. 2).

4. Claims 25-43, 45-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Dyke (4,304,869).

Dyke discloses, in figs. 1-5, a device is capable of storing liquid comprising a container and a removable cap 2. The container comprises a nozzle having an outer portion containing a gripping portion 22. The cap comprises a sidewall with an inner surface containing gripping portion 38, 39 to engage the nozzle gripping portion. The cap further comprises a communication element 24 having a duct capable placing inside the container in communication with a zone delimited by the cap and in communication with the outside when the cap is partially gripping the nozzle (see fig. 4). The communication element comprises 3 tabs separated by slots. The cap is a stopper element and a pressure equalizing element which equalizes pressure inside the container and outside the container when the cap is partially gripping the nozzle (see fig. 4). The stopper element is capable of being a liquid containment element adapted to retain liquid in the container axially distant from the container orifice when the cap is engaged to the nozzle. The topper element comprises a tube with a length longer than that of the cap, arranged inside the cap and opening at one end near the orifice of the nozzle when the cap is engaged to the nozzle.

5. Claims 26, 28 and 46 rejected under 35 U.S.C. 102(b) as being anticipated by Aichinger (3,987,921) or Aichinger et al. (4,253,581). Aichinger or Aichinger et al. discloses a storage device comprising a container having a gripping portion; a cap comprising a gripping portion to engage the container gripping portion, a stopper element and a liquid containment element.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mennesson. Although Mennesson is silent as to disclose a length of the tabs either approximately equal or longer to the nozzle length, it would have been an obvious matter of design choice to make the length of the tabs in Mennesson device as claimed, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

8. Claims 33, 35, 37, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baugh in view of Mennesson.

In regard to claim 33, 35 and 37, Baugh does not disclose the stopper element comprising tabs and slots.

Mennesson teaches a stopper element comprising tabs and slots.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Baugh stopper element with tabs and slots, as taught by Mennesson, in order to provide a flexibility for the end of the stopper when insert to the container.

9. In regard to claim 39 and 41, Baugh in view of Mennesson does not disclose a length of the tabs either approximately equal or longer to the nozzle length, it would have been an obvious matter of design choice to make the length of the tabs in Baugh in view of Mennesson device as claimed, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Response to Arguments

10. Applicant's arguments with respect to claims 25-43 and 45-48 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Mennesson does not disclose a liquid containment element. However that is not found convincing because Mennesson discloses, in figs. 3 and 4, the bead 6 on the stopper is capable of being a seal which is capable of retaining the liquid in the container when the gripping portion of the cap is engaged to the container nozzle.

Applicant argues that Baugh does not disclose the gripping portion of the cap being engaged to the container nozzle. However, that is not found convincing because Baugh discloses, in figs. 3 and 6, the gripping portion of the cap is engaged to the container nozzle.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Palmer teach stopper caps having tabs and slots.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 703-305-0294. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Lien Ngo

August 15, 2003

A handwritten signature in black ink, appearing to be 'Lien Ngo', with a long horizontal stroke extending to the left.